

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

THOMAS LAVIRL SLADE, # 31700

PETITIONER

versus

CIVIL ACTION NO. 2:11-cv-99-KS-MTP

MARGARET BINGHAM

RESPONDENT

ORDER

THIS CAUSE is before the court on the Petitioner's Motion to Amend Petition [10] and Respondent's Motion to Stay Case Pending Decision on Petitioner's Motion to Amend [11]. Having reviewed the submissions of the parties and the applicable law and being fully advised in the premises, the court finds that Petitioner's Motion to Amend Petition [10] should be granted and Respondent's Motion to Stay Case Pending Decision on Petitioner's Motion to Amend [11] should be granted in part and denied in part.

On or about April 27, 2011, Petitioner filed his Petition [1] and supporting Memorandum [3] pursuant to 28 U.S.C. § 2254. In his Motion to Amend and Correct Petition [10], Petitioner requests leave to amend and correct his petition, claiming his original petition is "improperly prepared" in that all the supporting facts are not included. He further claims that his original petition and memorandum are unnecessarily lengthy (152 pages total), and that they include lengthy, repetitious, and inapplicable case citations.

The Respondent has not yet filed her answer to the petition; Respondent's answer to Petitioner's federal habeas petition is currently due on August 22, 2011. *See* Order dated 6/23/11. In her Motion to Stay Case [11], Respondent requests the court to stay her current deadline until such time as the court rules on Petitioner's motion to amend, and asks the court to enter a new briefing schedule for Petitioner's amended habeas petition and any responsive pleading to be filed by Respondent in the event Petitioner's motion to amend is granted.

Respondent does not oppose the motion to amend.¹

The Federal Rules of Civil Procedure apply to Section 2254 cases in this court “to the extent they are not inconsistent with any statutory provisions or [the Rules Governing Section 2254 Cases in the United States District Courts].” Rule 12, Rules Governing Section 2254 Cases in the United States District Courts; *see also* 28 U.S.C. § 2242 (stating that a petition for habeas corpus “may be amended or supplemented as provided in the rules of procedure applicable to civil actions”).

Rule 15(a)(1) of the Federal Rules of Civil Procedure provides that “A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1); *see also* Fed. R. Civ. P. 15(a) (2) (stating that leave to amend shall be freely given when justice so requires). Respondent has not filed her responsive pleading. Thus, Petitioner should be granted leave to amend his petition pursuant to Fed. R. Civ. P. 15(a)(1). Accordingly,

IT IS, THEREFORE, ORDERED AND ADJUDGED:

1. That the Petitioner’s Motion to Amend/Correct [10] is GRANTED. Petitioner shall file his amended petition and any supporting memorandum brief on or before August 30, 2011.
2. Respondent’s Motion to Stay Case Pending Decision on Petitioner's Motion to Amend [11] is GRANTED in part and DENIED in part. Respondent’s motion to stay case pending decision on Petitioner's Motion to Amend is denied as moot.

¹Indeed, Respondent notes that Rule 15 of the Federal Rules of Civil Procedure clearly provides that an amendment may be made before a responsive pleading has been filed.

Respondent's motion is granted to the extent she requests a new briefing schedule.

3. Respondent shall file her answer or other responsive pleading within twenty (20) days of service of Petitioner's amended petition.
4. Petitioner shall file his traverse, if any, within fourteen (14) days of service of Respondent's answer or other responsive pleading.

SO ORDERED on this, the 16th day of August, 2011.

s/ Michael T. Parker

United States Magistrate Judge